

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA and
STATE OF MINNESOTA,

Plaintiffs,

V.

ALLTEL CORPORATION and
MIDWEST WIRELESS HOLDINGS L.L.C.

Defendants.

**PETITION OF PLAINTIFFS
FOR AN ORDER TO
SHOW CAUSE WHY
DEFENDANT ALLTEL
CORPORATION SHOULD
NOT BE FOUND IN
CIVIL CONTEMPT**

Case No. 06-3631 (RHK/AJB)

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, and the State Of Minnesota, by its Attorney General Lori Swanson, present this Petition for an Order requiring Defendant ALLTEL Corporation to show cause why it should not be found in civil contempt of the Preservation of Assets Order entered by this Court on September 8, 2006, and the Final Judgment entered by this Court on January 8, 2007, in *United States v. ALLTEL Corp. and Midwest Wireless Holdings*, Civ. No. 0:06-cv-03631 (D. Minn.). Copies of the Preservation of Assets Order and Final Judgment are attached to this petition. The United States represents as follows:

I. THE DEFENDANT

1. Defendant ALLTEL Corporation (“ALLTEL”) is one of the named defendants

in the Preservation of Assets Order and Final Judgment. ALLTEL is a Delaware corporation with its principal place of business is at One Allied Drive, Little Rock, Arkansas 72202.

II. JURISDICTION OF THE COURT

2. This Petition alleges violations of the Preservation of Assets Order and Final Judgment by ALLTEL. This Court has jurisdiction under its inherent powers to enforce orders and Section XII of the Final Judgment, which provides:

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, or to punish violations of its provisions.

III. BACKGROUND

3. Defendants ALLTEL and Midwest Wireless Holdings L.L.C. (“Midwest Wireless”) entered into a Transaction Agreement dated November 17, 2005, pursuant to which ALLTEL would acquire Midwest Wireless. Plaintiffs United States and the State of Minnesota filed a civil antitrust Complaint on September 7, 2006, seeking to enjoin the proposed acquisition.

4. At the same time that the Complaint was filed, the parties lodged a proposed Final Judgment. The purpose of the proposed Final Judgment was to ensure ALLTEL’s prompt divestiture of certain assets in four Minnesota Rural Service Areas (“RSA”), Minnesota RSAs 7, 8, 9, and 10. The purpose of these divestitures was to remedy the anti-

competitive effects that the plaintiffs alleged would otherwise result from ALLTEL's acquisition of Midwest Wireless.

5. Also at the same time that the Complaint was filed and the proposed Final Judgment was lodged, the parties filed a Preservation of Assets Stipulation, and a Preservation of Assets Order was entered by this Court on September 8, 2006. The purpose of the Preservation of Assets Order was to ensure the competitiveness of the divestiture assets pending divestiture by ALLTEL. The Preservation of Assets Order provided that the divestiture assets would be managed by an independent Management Trustee during the divestiture period and specified ALLTEL's duties with respect to the divestiture assets and the Management Trustee.

6. On October 3, 2006, ALLTEL closed its acquisition of Midwest Wireless. On January 8, 2007, this Court entered the Final Judgment. On April 2, 2007, ALLTEL divested the assets to Rural Cellular Corporation ("RCC").

**IV.
CONDUCT REQUIRED BY THE FINAL JUDGMENT
AND PRESERVATION OF ASSETS ORDER**

7. Section VIII of the Final Judgment requires that ALLTEL "shall take all steps necessary to comply with the Preservation of Assets Order."

8. Section VI.F of the Preservation of Assets Order requires ALLTEL to provide the Management Trustee with "detailed management reports describing existing and future plans for . . . network upgrades and capital expenditures, and the extent to which each

plan or project has been completed” for each of four divested RSAs at least five days prior to the closing of ALLTEL’s acquisition of Midwest Wireless.

9. Section VI.B.2 of the Preservation of Assets Order requires ALLTEL to “take all steps necessary to ensure that . . . the Divestiture Assets are maintained by adhering to normal and planned repair, capital improvement, upgrade and maintenance schedules, or at a greater level if necessary to insure that the Divestiture Assets remain competitive.”

10. Section V.C.4 of the Preservation of Assets Order requires ALLTEL to “develop such financial or other information as the Management Trustee may request,” “cooperate with the Management Trustee,” and “take no action to interfere with or impede the Management Trustee's ability to monitor [ALLTEL’s] compliance” with the Preservation of Assets Order and Final Judgment.

**V.
VIOLATIONS OF THE FINAL JUDGMENT AND
PRESERVATION OF ASSETS ORDER**

11. ALLTEL violated Section VIII of the Final Judgment by failing to take all of the steps necessary to comply with its duties under Sections VI.F, VI.B.2, and V.C.4 of the Preservation of Assets Order prior to its divestiture of the assets to RCC.

12. ALLTEL violated Section VI.F of the Preservation of Assets Order by failing to timely provide the Management Trustee with detailed reports describing ALLTEL’s plans for capital expenditures in the divestiture markets and the extent to which those plans had been completed. The capital expenditure reports that ALLTEL provided to the

Management Trustee prior to ALLTEL's acquisition of Midwest Wireless were deficient in that they lacked a detailed accurate description of the planned projects, failed to disclose relevant information about ALLTEL's existing plans for the divestiture markets, and failed to report relevant information about the extent to which ALLTEL had completed its existing plans. Additionally, in accordance with the standards and requirements established by the Minnesota Public Utilities Commission ("PUC"), on June 1, 2006, ALLTEL submitted an Eligible Telecommunications Carrier Certification and Annual Report to certify its eligibility for high cost support from the federal universal service fund. In conjunction with this Certification, ALLTEL was required by 47 C.F.R. Section 54.202 as modified by the Minnesota PUC,¹ a two year Service Improvement Plan "that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis or on a service-area basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements." Although ALLTEL timely filed the required

¹*In the Matter of a Commission Investigation to Consider Adopting the Federal Communications Commission's Standards for Designating Eligible Telecommunications Carriers*, Order Adopting FCC Requirements for Designating Eligible Telecommunications Carriers, as Modified, MPUC Docket No. P-999/M-05-1169 (Oct. 31, 2005).

Service Improvement Plan on June 1, 2006, and this Service Improvement Plan contained information pertaining to the four divestiture markets, ALLTEL failed to provide this plan to the Management Trustee before he began to manage the four divestiture RSAs in October 2006.

13. ALLTEL violated Section VI.B.2 of the Preservation of Assets Order by failing to take all steps necessary to ensure that the Divestiture Assets were maintained by adhering to ALLTEL's existing plans for capital improvements, upgrades and maintenance schedules at a level necessary to ensure that the Divestiture Assets remained competitive. ALLTEL failed to adhere to its existing plans and therefore the assets were not maintained as required under the Final Judgment and Preservation of Assets Order. Consequently, the Management Trustee initially was induced to implement a capital improvement plan and budget that were far less extensive than ALLTEL's existing plans for capital improvement of the Divestiture Assets and was prevented from ensuring that the Divestiture Assets remained competitive.

14. ALLTEL violated Section V.C.4 of the Preservation of Assets Order 1) by failing to provide the Management Trustee with relevant information about ALLTEL's proposed capital improvement plans as requested by the Management Trustee, including detailed and accurate information about the basis for ALLTEL's proposed budgets, and 2) by giving the Management Trustee misleading reports in December 2006 about progress on capital improvement projects scheduled by the Management Trustee.

ALLTEL's failure to provide complete and accurate information as requested by the Management Trustee interfered with the Management Trustee's ability to monitor ALLTEL's compliance with Sections VI.F and VI.B.2 of the Preservation of Assets Order.

15. By failing to comply with its duties under Sections VI.F, VI.B.2, and V.C.4 of the Preservation of Assets Order, ALLTEL is in civil contempt of the Preservation of Assets Order and Section VIII of the Final Judgment.

VI. PRAYER

WHEREFORE, for the foregoing reasons, plaintiffs respectfully request that this Court enter an Order directing Defendant ALLTEL to appear before this Court at a time and place to be fixed in said Order, to show cause why it should not be adjudged in civil contempt of this Court, and pray for the following relief:

- (1) that Defendant ALLTEL be found in civil contempt for the violations of the Preservation of Assets Order and Final Judgment described above;
- (2) that Defendant ALLTEL be ordered to pay an amount deemed appropriate by the Court for contempt of this Court's Preservation of Assets Order and Final Judgment;
- (3) that plaintiffs be awarded costs and attorneys fees incurred in investigating ALLTEL's conduct and filing this Petition to Show Cause; and

(4) that plaintiffs have any and all other relief as the Court may deem justified.

Dated: December 3, 2007

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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